

**125 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-15077-2021

Date of decision : 24.09.2021

Sumit Chaudhary

..... Petitioner

versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Himmat Singh, Advocate
for the petitioner.

RAJESH BHARDWAJ, J. (ORAL)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

The petition has been filed praying for setting aside the impugned order dated 18.01.2021 passed by the learned Additional Sessions Judge, Gurugram, whereby the application filed under Section 311 Cr.P.C. by the petitioner for summoning some of the witnesses namely, Mr. Suresh Sansanwal, Mrs. Sutapa Rao, Jagdish Jhorar and for placing some documents like e-mail dated 28.07.2015 issued by accused to deceased, whats app chat of deceased with witness Sutapa Rao, pendrive having video of marriage and some photos of deceased with accused at the house of Mr. Suresh Sansanwal, was dismissed.

The complainant/petitioner, who is the author of the FIR, had filed the FIR wherein it has been alleged that he married his sister Himani to Amit Kumar on 04.02.2016. He alleged that his sister was working as

Manager in OBC Bank. Soon after the marriage, Himani and her husband Amit Kumar started residing at House No.44, Rizwood State DLF, Phase-IV, Gurgaon. It was alleged that Amit Kumar started harassing the sister of the complainant for dowry and his parents also used to taunt his sister on account of dowry. It was informed by his sister several times to her parents on phone, however, the harassment kept on unabated. Finally, the situation being intolerable, she committed suicide by hanging herself on 26th April, 2017. As a result, the present FIR was registered. Initially, the FIR was registered under Sections 306/34 IPC which was later on converted to Section 304-B IPC. The allegations were found to have been substantiated only against Amit Kumar, the husband. As the trial commenced, the petitioner-complainant appeared as PW-7 and deposed against the parents. On the basis of the same, application under Section 311 Cr.P.C. was filed for summoning some of the witnesses and abovesaid material.

Learned trial Court heard the counsel for the petitioner and perused the material on record and after hearing, declined the application under Section 311 Cr.P.C. vide its order dated 18.01.2021. Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition.

Learned counsel for the petitioner would submit that the learned trial Court has fallen in error in declining the application filed under Section 311 Cr.P.C. He would submit that the examination of the witnesses as mentioned in the application is necessary for the just decision of the case and in the light of the judicial precedents laid down, the same deserves to be allowed. However, the learned trial Court failed

to appreciate the same and thus, arrived at wrong conclusion which is unsustainable in the eyes of law.

I have heard counsel for the petitioner and perused the material on record.

Evidently, the occurrence in question took place in 2016. Thereafter, the challan has been presented and trial is in progress. It has been submitted by counsel for the petitioner on the asking of the Court that out of 39 witnesses, only one remains to be examined. Looking into the provisions of Section 311 Cr.P.C., time and again the Hon'ble Supreme Court had settled this law that the provision is applicable at any stage of any inquiry, trial or other proceeding if the evidence of such witness appears to be essential to the just decision of the case. The Hon'ble Supreme Court had held in a number of judicial precedents that the Court should use this power if it is found to be expedient in the interest of justice. However, overall facts and circumstances of the case should be taken into consideration and the power should not be allowed to be misused for prolonging the trial or filling up the lacunas. Taking into consideration the facts of the present case, it is discernible that the witnesses prayed to be called were never joined in the investigation. They were not even cited as the witnesses in the challan and their statements were never recorded under Section 161 Cr.P.C. As already noted, only one prosecution witness remains to be examined by the trial Court. The present application has been filed by the complainant at the stage when trial is virtually at its fag end. Testing the facts and circumstances of the present case on the anvil of judicial parameters laid down by the Hon'ble Apex Court, the present case fails to qualify the test

laid down as the witnesses prayed to be summoned cannot be said to be the material witnesses necessary for the just decision of the case. Application filed at this stage is vexatious and would result only in prolonging the trial which would be totally a futile exercise.

In the overall facts and circumstances of the case, this Court finds that there is no perversity in the conclusion arrived at by the trial Court and hence, the petition being devoid of any merits, is hereby, dismissed.

(RAJESH BHARDWAJ)
JUDGE

24.09.2021
m. sharma

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No